IN THE

Supreme Court of the United States.

October Term, 1905.

GEORGE C. HAZELTON, *Appellant*,
vs.
FRANCIS MILLER, *Appellee*.
} No. 225.

BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

In the month of December, 1902, there being then pending before Congress a bill for the purchase of square No. 143, in the City of Washington, as a site for a Hall of Records, the appellant obtained from the appellee the agreement set forth at pp. 4-5 of the Record, to the effect that the latter would sell to the former part of lot 2, in that square, for $9,000.00, "at any time during the present session of Congress, and such

gress and the departments, where, because of the absence of such jurisdiction in the courts, those bodies were appealed to in a *quasi* judicial capacity, not to make laws, but to pass upon the merits of money demands, and to award execution or provide for their payment to the extent that they were found just and legal. In the latest of these cases before this Court, Ball *v.* Halsell, 161 U. S., at p. 80, they are referred to as decisions upon "contracts for contingent fees, by which attorneys employed to prosecute *claims* against the United States were to be allowed a proportion of the amount recovered in case of success, and nothing in the case of failure." A *claim* is "a demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty." Priggs *vs.* Pennsylvania, 16 Pet., 615.

The only case from this Court cited below as being to the contrary effect was Spaulding *v.* Mason, 161 U. S., 375, with respect to which case it is to be noted that the quotation relied upon is from the syllabus, and that there is no syllable in the opinion which supports it. Independently of this fact, however, the case of Spaulding *v.* Mason was that of a contract by Spaulding to prosecute the claims of certain post-masters for the payment of just and legal debts due to them from the United States, suable before Congress, only, because of the lapse of time since they became due, and thus falling strictly within the classification of cases referred to in Ball *v.* Halsell, *supra*, in which contingent fees are allowable. The controversy was, not over the validity of these contracts, but of a contract by Spaulding with Mason, another lawyer, to allow the latter an agreed percentage of Spaulding's compensation in the cases, in consideration of certain pecuniary aid to be furnished by Mason in their prosecution.

That the decision of this Court in Mason *v.* Spaulding, even as stated in the syllabus to the opinion in that case,

was not intended to be taken as overruling the principle established by Tool Co. *v.* Norris, 2 Wall., 45, is evidenced by the fact that in, perhaps, its latest declaration upon that subject, in McMullen *v.* Hoffman, 174 U. S., at p. 648, the rule declared in Tool Co. *v.* Norris was re-asserted, quoted and applied, as the established law upon the subject in question.

In view of the rulings of this Court directly upon the point, it is deemed unnecessary to consume the time of the Court by a discussion of the decisions of the State courts, except such of them as have been cited and approved by this Court.

Clippinger *v.* Hepbaugh, 5 W. & S., 315, cited and approved in Marshall *v.* B. & O. R. R. Co., 16 How., at p. 314, was an action to recover upon an agreement to pay a contingent fee to a lawyer, in case he succeeded in procuring from the legislature of the State a law authorizing his client and the latter's wife to sell certain real estate devised to the wife under a will of one Stuart, the will not authorizing such sale. There was no suggestion whatever of improper conduct, or of the rendition of any but the most correct professional services, but the court said: "Any agreement for a contingent fee, to be paid on the passage of a legislative act, would be illegal and void, because it would be a strong incentive to the exercise of personal and sinister influences to effect the object. * * * It matters not that nothing improper was done, or was expected to be done, by the plaintiff. It is enough that such is the tendency of the contract, that it is contrary to sound morality and public policy, leading necessarily, in the hands of designing and corrupt men, to improper tampering with members, and the use of an extraneous, secret influence over an important branch of the government." Wood *v.* McCann, 6 Dana, Ky., 266, also cited and approved in Marshall *v.* B. & O. R. R. Co., was an action on a contract

to pay a lawyer a fee to get two bills passed by the legislature, one divorcing the defendant from a former wife from whom he had not been legally divorced, and the other legalizing his marriage with his then present wife. There was no proof or claim that the attorney was to seek or exercise influence, or to render any other than strictly professional services, and it did not appear whether the stipulated fee was to be contingent or certain. The court declared that if it had been shown that "the fee, or any portion of it, depended on the passage of the legislative acts or either of them, we should be clearly of the opinion that the contract should be deemed illegal and void, because a contingent fee is a direct and strong incentive to the exertion of not merely personal, but sinister influences upon the legislature; and, therefore, public policy forbids the legal recognition of any such contracts, upon the same principle upon which it interdicts wagers on elections and contracts for *procuring* pardons. Contingent fees in a court of justice have been, when not champertous, tolerated by usage and common law, and their validity depends on other principles not applicable to the like fees for exertions made with the legislature or governor." And it was only on the ground that the fee was not shown to have been contingent that the judgment in the plaintiff's favor was held maintainable.

These two cases maintain, unmistakably, that contracts for a contingent compensation, or for a contingent pecuniary interest or benefit for services in procuring the passage of legislative acts, however free from corrupt or improper means, are contrary to public policy and void; and, having been cited, approved and followed by this Court in Marshall v. B. & O. R. R. Co., they stand endued with the force and authority of decisions by this Court.

Coming to direct decisions by this Court upon the question involved, the case of Marshall v. B. & O. R. R. Co. is

itself conclusive. It is true that, as is urged on behalf of the appellant, the contract between the parties in that case was for the employment of corrupt means to obtain the desired legislation; but its invalidity was also asserted and declared by this Court upon the independent ground that a contract for a contingent fee for services in obtaining a legislative act is, of itself, and however free in fact from improper means or agencies, contrary to public policy and void.

At p. 226, in this case of Marshall *v.* B. & O. R. R. Co., three propositions are declared by the Court:

"1st. That all contracts for a contingent compensation for obtaining legislation, *or* to use personal or any secret or sinister influence on legislators, are void by the policy of the law.

"2nd. Secrecy as to the character under which the agent or solicitor acts, tends to deception, and is immoral and fraudulent; and, where the agent contracts to use secret influences, or voluntarily, without contract with his principal, uses such means, he cannot have the assistance of the court to recover compensation.

"3rd. That what, in the technical vocabulary of politicians, is termed "log rolling," is a misdemeanor at common law, punishable by indictment."

The only answer to this case at the hearing below was that, in it, improper and corrupt means were employed by the plaintiff; but this, it will be seen from the language of the opinion above quoted, is no answer at all, unless it can be said that, where the court decides a case upon one principle, and also upon another principle, neither of them is established, and that decisions are authoritative only when they rest upon a single point or principle. It would be just as competent to argue, in a case in which a certain,

non-contingent fee was to be paid for the use of personal or improper influences in procuring legislation, that, although Marshall *v.* B. & O. R. R. Co. decides that a contract for such services is illegal and void, yet that the case is not authority for that proposition because the contract in that case was also held illegal for the reason that, in it, the compensation was contingent.

If, however, the authority of Marshall *v.* B. & O. R. R. Co. can be held weakened by the fact that the contingent character of the compensation was one of the two different grounds upon which the contract in that case was held to be illegal, no such objection can be urged to Tool Company *v.* Norris, 2 Wall., 45, another leading case in this Court upon the subject in controversy. At pages 54-55, after referring to the authorities which hold agreements for compensation to procure legislation void, the Court declares: "These have been universally declared invalid, *and the decisions have not turned upon the question whether improper influences were contemplated or used, but upon the corrupting tendency of the agreements.* * * * * Agreements, for compensation contingent upon success suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception." And, at page 56, the Court continues: "It is sufficient to observe, generally, that all agreements for pecuniary considerations to control the business operations of the Government, or the regular administration of justice, or the appointments to public offices, or the ordinary course of legislation, are void as against public policy, without reference to the question whether improper means are employed or used in their execution. The law looks to the general tendency of such agreements; and it closes the door to temptation, by refusing them recognition in any of the courts of the country."

Under this decision, re-affirmed as above noted in McMullen *v.* Hoffman, 176 U. S., p. 648, it is utterly impossible to sustain any agreement for a contingent compensation, fee or profit, in consideration of efforts or services to procure or affect legislation. The Court declares, as emphatically as it is possible to do in language, that all such agreements are invalid, not because of any question "whether improper influences were contemplated or used" but "upon the corrupting tendency of the agreements;" and that they are "void as against public policy," without reference to the question whether improper means are contemplated or used in their execution.

The argument below that, in the contract, it was not stipulated that the appellant was to render any services before Congress, or that he should not retain the land himself instead of conveying it or permitting it to be conveyed, and the like, is unavailing. It is not even necessary to involve the rule, (Pettingale *v.* Berney, 122 U. S., 254) that a court of equity "looks through the form, to the substance" of contracts or other instruments. The fact that the plaintiff was to render the stipulated services as the consideration of the contract, and that he was to receive as his compensation for them only what might be realized or obtained from the Government above the owner's price, is entirely apparent upon the face of the bill. The gravamen of the appellant's complaint, as specifically set forth in his bill, is, that the appellee "denies the right of the plaintiff to the purchase money for which said property is sold in excess of the $9,000.00."

While, as above intimated, it is an unnecessary consumption of the time of the Court to discuss decisions of the State courts upon any question arising in this jurisdiction, which has been expressly and definitively passed upon by this Court, yet as the State decisions principally relied upon below on behalf of the appellant are but two in num-

additional time as may be necessary for settlement under appropriation by that Congress." The bill alleges that an act was thereafter passed by Congress authorizing the purchase or condemnation of square No. 143, and appropriating $400,000.00 or so much thereof as might be necessary to pay for the same, the act providing that the Secretary of the Treasury might acquire the square, or any part of it, by negotiation at such price as might be deemed reasonable, instead of by condemnation; that, following the passage of the act, the appellant negotiated a sale of the appellee's property in the square to the Government for $14,395.50, and thereupon notified appellee that the contract had been made, but that some time would be required for the investigation of title and other preliminaries, before the money could be paid; that the appellee thereupon declared his intention of conveying his property direct to the United States Government, and to receive from it the price which it would pay for the land, and that the appellee "denies the right of the plaintiff to the purchase money for which said property is sold in excess of the $9,000.00"; that the appellant thereupon caused a deed, set forth at pp. 5-6 of the Record, to be prepared for execution by the appellee and his wife conveying the property to the plaintiff; tendered him the $9,000.00, and demanded execution and delivery of the deed, with which demand the appellee refused to comply. The prayer of the bill was that the appellee be required to give to the appellant a good record fee simple title to the property. Apart from the nominal "one dollar," the agreement purports to be made upon "other valuable considerations." These, set forth in paragraph 4 of the bill, consist of services, rendered and to be rendered, in bringing square No. 143 to the attention of committees of Congress as a suitable and proper site for the Hall of Records, the expenditure of much time and labor, and of considerable money, in calling the attention

of these committees to its eligibility and desirability for that purpose, in employing others to aid and assist the appellant in securing information to demonstrate to the committees of the House and Senate the propriety of the purchase, and in causing printed statements of the facts to be placed in the hands of members of the committees, and in the hands of other members of Congress for use when the bill should come up for debate, &c.

It is entirely apparent, from the foregoing facts, that the appellant at no time contemplated that he should become the purchaser or owner of the ground referred to in the contract, but only that he should render the services specified, and, as compensation for them, receive whatever sum in excess of $9,000.00 the land should be sold for to the Government. By the very terms of the agreement, not only the duration of the session of Congress before which the bill to purchase was pending, this being the second and final session of that Congress, was to be allowed for the purchase, 'but such additional time as might be necessary for settlement under appropriation by that Congress;' and the very consideration for the option was services to be rendered by appellant to secure acquisition of the property, not by or for himself, but by the Government, and for public purposes.

No ingenuity of language, whether of the opposing brief or in oral argument, can disguise the real fact that the agreement was a contract by the appellant to secure, if possible, sale of the ground to the United States, for governmental purposes, and to depend for his compensation upon the success of that effort; and that, upon the effecting of such sale at a greater price than $9,000.00, the excess above that price, however great it might be, was to be his contingent compensation for his services. The complaint in the bill (Record p. 3) is that the appellee "denies the right of the plaintiff to the purchase money for which said

property is sold in excess of the $0,000.00."

At the hearing below, it was urged that the appellant had tendered his own money in payment for the land. If this fact be material, it is entirely apparent from the bill, as from the agreement itself, that it was never his purpose to purchase the property with his own money; that, after negotiating the sale of the land to the Secretary of the Treasury, he notified the appellee that the money could not be paid for sometime thereafter, and that "the necessary time for settlement under said appropriation," evidently referring to the terms of the agreement between them, "has not yet expired"; and it was not until the controversy between them, now in litigation, had arisen, that the tender of the appellant's own money was made, for the purpose, simply, of making a supposedly better case for suit.

The Supreme Court of the District of Columbia sustained a demurrer filed by the appellee and dismissed the bill, upon the view that the contract set up in it was void on grounds of public policy; while the Court of Appeals affirmed the decree upon the totally different ground that the suit was simply to collect a money demand, from a defendant not claimed to be amply responsible, and that, therefore, the bill presented no case for specific performance or other relief in equity.

POINTS AND AUTHORITIES.

Several questions not considered or passed upon by either of the lower courts were presented and argued under the demurrer, such as that, the bill praying conveyance by appellee's wife as well as by himself, she was a necessary party; that the agreement sued upon, not being mutually enforcible, was not one to be specifically enforced in equity (Marble Company *vs.* Ripley, 10 Wall., 359); that the bill was inequitable in seeking to tie up, not merely the

$5,305.50 claimed by the appellant, but, also, the $9,000.00 which was concededly to go, in any event, to the appellee (Trist *vs.* Child, 21 Wall., p. 446); that, setting up a contract between the appellant and his own client, under which the former was to receive about sixty per centum above the price the latter was to get for his property, the bill offered no pretence that there was any change in market conditions during the eight months intervening between the contract and the suit to account for this remarkable rise in value, and made no attempt to sustain the burden which the law casts upon an attorney, dealing with his client, to show that the contract was in all respects a fair one, and that the latter's interests were fully protected (Gibson *v.* Jeyes, 6 Ves., 268; Savery *v.* King 5 H. L. C., 655; Hunter *v.* Atkins, 3 Myl. & K., 113, 135; Dunn *v.* Record, 63, Me., 17; Burnham *v.* Hezelton, 82 Me., 495), etc. The two questions also presented, however, and which were passed upon, are conceived to be necessarily conclusive of the case, and this brief will be confined to them.

I.

In the first place, then, does the bill present a case for specific performance? Unless it does, the decree below must inevitably be affirmed, because this is the sole ground of equitable jurisdiction upon which the suit is based.

The jurisdiction for specific performance extends only to cases in which "the specific thing or act contracted for, and not mere pecuniary compensation," is the remedy or redress necessary to the complainant's relief. (Adams Eq. *p. 83.)

For so elementary a proposition, the citation of authorities would be superfluous. Its application to the facts of the present case is equally too clear to admit of discussion. It is entirely plain that the difference between

$9,000.00 and the price which the Government has agreed to pay, is what the appellant seeks, and all that he is really in any view entitled to, or will in any event obtain. Nor does the bill contain any allegation, or intimation, that the appellee is insolvent, or that he is not abundantly able to respond to any judgment which the appellant may be able to recover against him for breach of the alleged contract between them. The purchase price to be paid for his property in square No. 143 is three times the amount of appellant's claim, and there is no allegation in the bill, nor, as is evidenced by his election to stand on his demurrer, can there be any, that the appellee is not of ample financial responsibility for the payment of any judgment at law the appellant may obtain against him. And see Brief for Appellant, p. 18.

As stated by the Court of Appeals in its opinion, (Record, p. 11), this objection, alone, must necessarily be sufficient to sustain the decree below, dismissing the bill. But for the fact that, if based upon it alone, the parties and the courts are liable to be burdened with further litigation over the controversy in the form of a suit at law for damages, no further question would be argued in this Court. Inasmuch, however, as it is to the interest of both the parties and the courts, and of the public as well, that further useless litigation may be avoided, it remains to present the proposition upon which the Supreme Court of the District of Columbia rested its decree.

II.

This proposition is, that a contract, not to prosecute befor Congress, acting in a *quasi* judicial capacity, a claim of right, but to seek to obtain from it, in its purely legislative capacity, and for a contingent compensation, a contract of purchase or other advantage or benefit to which

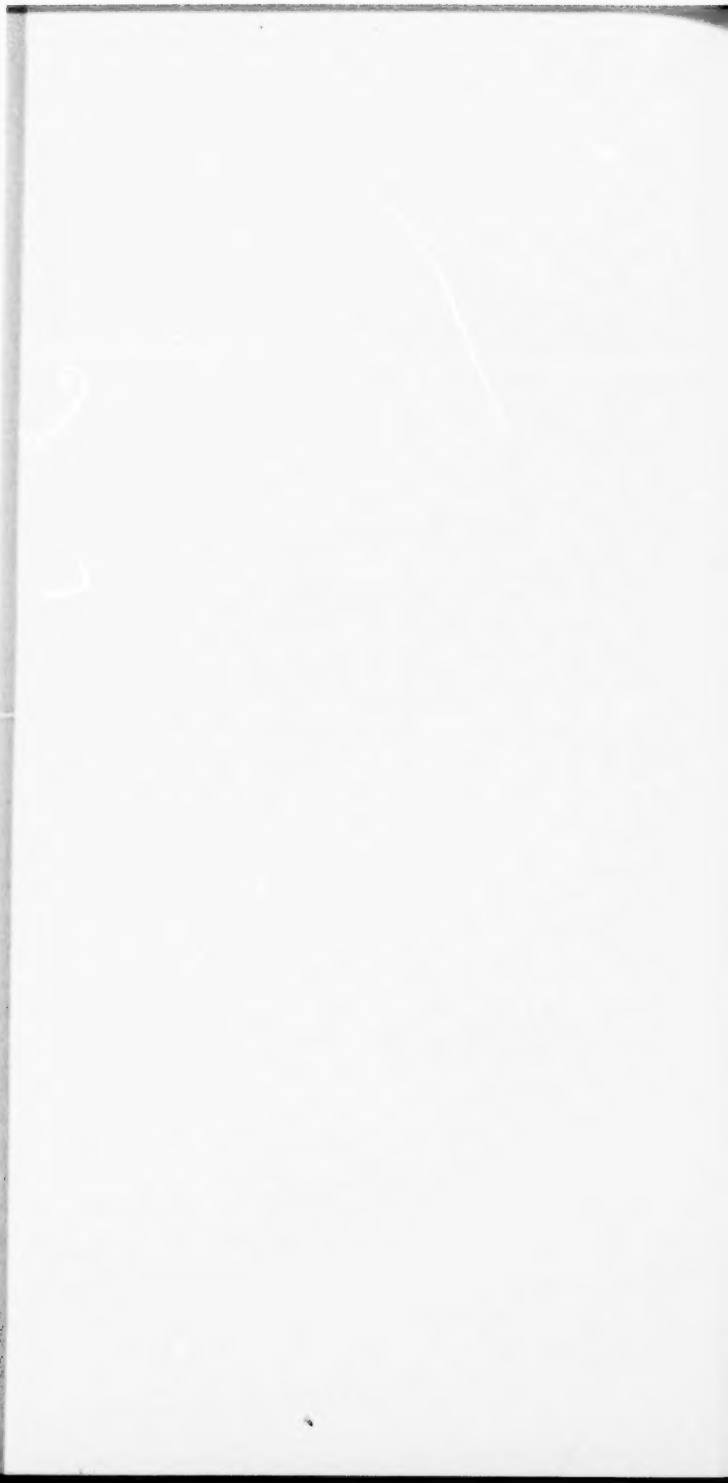
the other party to the contract has no legal claim, is against public policy and void.

The two propositions urged on behalf of the appellant in the lower courts were that he had not, in fact, performed any acts under his contract which were in contravention of public policy, and, secondly, that contracts with lawyers for contingent compensation for services before Congress or other legislative or official bodies have repeatedly been held to be valid, by this Court and elsewhere.

The first of these propositions was not contested on behalf of the appellee, and the second of them, also, was fully conceded, within the limitations of the decisions referred to. These limitations are thus expressed in 29th Am. & Eng. Enc. 2d Ed., p. 177:

"It is well settled, as a general principle, that parties are at perfect liberty to employ attorneys to prosecute claims against the United States, and to make contracts with such attorneys for contingent fees, whereby a portion of the amount recovered in case of success will be considered as compensation, and nothing will be paid in case of failure; yet, where parties have no claim against the United States, but are merely desirous of having a favor granted, either by way of legislation or by way of a Government contract from one of the executive departments, public policy forbids any agreement for contingent compensation."

Of the many instances in which this Court, and other courts, have sustained agreements for contingent fees for services before Congress and before the departments, the cases, without exception, involved contracts for the prosecution of claims for the collection of debts. They are, without exception, cases for the prosecution of legal causes of action, tried before courts wherever there were courts possessing the jurisdiction to try them, and before Con-



Margaret R. Sheckels et al., heirs and devisees of

Supreme Court of the United States.

No. 225.—October Term, 1905.

George C. Hazleton, Appellant, vs. Francis Miller, Dec'd, } Appeal from the Court of Appeals of the District of Columbia.

[April 23, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill for the specific performance of a contract dated December 11, 1902, to sell for nine thousand dollars, at any time during the then present session of Congress, "and such additional time as may be necessary for settlement under appropriation by that Congress," part of a lot in a square which Congress now has voted to acquire for the erection of a hall of records. The contract provided that if Hazleton should "fail to take advantage of and accept this offer as above within the time mentioned, then this agreement shall be null and void." The bill alleges that a part of the consideration for the contract "was services rendered both before and after the making of said contract, by the plaintiff in bringing the property to the attention of the committees of Congress as a suitable and appropriate site for a hall of records." It sets forth that the plaintiff, before and after the same date, expended much time labor and money in rendering those services, and what they were, viz., collecting and printing facts for the information of the committees and members of Congress, making briefs and arguments, and drawing a bill for the purchase or condemnation of the square. The bill passed at the session named in the contract. After its passage the plaintiff negotiated, and finally, in August, 1903, concluded a sale of the property in question for $14,395.50, subject to examination of the title and arrangements for payment. It is alleged that the time for settlement under the appropriation has not expired. The bill further alleges that the defendant has notified the plaintiff that he does not intend to keep his contract, but means to convey directly to the United States, and to demand the full price agreed upon by the Government. The defendant has tendered a deed to the United States, which has not been accepted. The plaintiff has offered to the defendant a deed to be executed by the latter and his wife, and tendered $9,000, but the defendant has refused to execute the same. There was a general demurrer to the bill, and this was sustained by the Supreme Court of the District and the Court of Appeals, and the bill was dismissed. The plaintiff appealed to this Court.

The bill was brought against one Miller. Recently Miller died & his heirs & devisees were substituted, but for convenience Miller will be referred to as the defendant.

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We assume that the bill sufficiently shows an acceptance of the defendant's offer within the time, although it does not allege it in terms. We assume also that the consideration is alleged sufficiently, subject to the question whether it is one upon which a contract lawfully may be based. But the Court is of opinion that that question must be answered in the negative. Every part of the consideration goes equally to the whole promise and therefore, if any part of it is contrary to public policy, the whole promise falls. *Pickering* v. *Ilfracombe Ry. Co.*, L. R. 3 C. P. 235, 250. *Hinngton* v. *Victoria Graving Dock Co.*, 3 Q. B. D. 549. *Woodruff* v. *Hinman*, 11 Vt. 592. *Clark* v. *Rieker*, 14 N. H. 44. *Mc-Mullen* v. *Hoffman*, 174 U. S. 639. *Bishop* v. *Palmer*, 146 Mass. 469, 474. According to the bill, and no doubt according to the fact, a part of the consideration was services, as we have quoted, and therefore it is not true, as argued, that the plaintiff could have demanded a conveyance on tendering the nine thousand dollars alone. But the services contemplated as a partial consideration of the promise to convey were services in procuring legislation upon a matter of public interest, in respect of which neither of the parties had any claim against the United States. An agreement upon such a consideration was held bad in *Tool Co.* v. *Norris*, 2 Wall. 45. Of course we are not speaking of the prosecution of a lawful claim.

It will be noticed further that the conveyance was in substance a contingent fee. The plaintiff was not bound to accept it and naturally would not do so unless he could agree as he did with the Government for a larger price. The real inducement offered to him was that he would receive all that he could persuade the Government to pay above the sum named. It is true that if we take the inartificial statements of the bill literally the part of the consideration which we are discussing was the services, not a promise to render them. The promise to convey did not become binding until the services were rendered, and, when rendered, according to the allegations of the bill they were legitimate. We assume that they were legitimate, but the validity of the contract depends on the nature of the original offer, and whatever their form the tendency of such offers is the same. The objection to them rests in their tendency, not in what was done in the particular case. Therefore a Court will not be governed by the technical argument that when the offer became binding it was cut down to what was done and was harmless. The Court will not inquire what was done. If that should be improper it probably would be hidden and would not appear. In its inception the offer, however intended, necessarily invited and tended to induce improper solicitations, and it intensified the inducement by the contingency of the reward. *Marshall* v. *Baltimore & Ohio R. R.*, 16 How. 314, 335, 336.

The general principle was laid down broadly in *Tool Co.* v. *Norris*, 2 Wall. 45, 54, that an agreement for compensation to procure a contract

from the Government to furnish its supplies could not be enforced, irrespective of the question whether improper means were contemplated or used for procuring it. (*McMullen* v. *Hoffman*, 174 U. S. 639, 648.) And it was said that there is no real difference in principle between agreements to procure favors from legislative bodies, and agreements to procure favors in the shape of contracts from the heads of departments. 2 Wall. 55. In *Marshall* v. *Baltimore & Ohio R. R.* 16 How. 314, 336, it was said that all contracts for a contingent compensation for obtaining legislation were void, citing, among other cases, *Clippinger* v. *Hepbaugh*, 5 W. & S. 315, and *Wood* v. *McCann*, 6 Dana (Ky.) 366. See also *Mills* v. *Mills*, 40 N. Y. 543. There are other objections which would have to be answered before the bill could be sustained, but that which we have stated goes to the root of the contract and is enough to dispose of the case under the decisions heretofore made.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.